Supreme Court of the United States

THE MICHIGAN SUGAR COMPANY,
Plaintiff in Error,

vs.

ROSCOE D. DIX, Auditor General of the State of Michigan,
Defendant in Error.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MICHIGAN.

BRIEF FOR DEFENDANT IN ERROR.

STATEMENT.

The Legislature of the State, at its session in 1897, passed an act popularly known as the beet sugar bounty act. The provisions of this act which are material to the matter under discussion are:

> "Sec. 1. There shall be paid out of the State Treasury to any person, firm or corporation engaged in the manufacture in the State of Michigan, of sugar from sugar beets grown in the State of Michigan, one cent per pound upon each and every pound of sugar so manufactured under the conditions and restrictions hereinafter provided."

Another material provision is that making an appropriation for 1897 and 1898 to pay the bounty created by section one. Ten thousand dollars was appropriated, and a tax of five thousand dollars was authorized to be incorporated in the State tax for each of the years 1897 and 1898.

The following provision was also added:

> "Provided, that if the amount of bounty shall exceed the amount of ten thousand dollars for the years eighteen hundred and ninety-seven and eighteen hundred and ninety-eight, that the deficit be paid from the general fund not otherwise appropriated."

This act received 57 votes in the House (see House Journal, p. 825), but was amended in the Senate; the House concurred in the amendment, and on final passage the bill, as amended, received 60 votes. So that at no time did the bill receive a two-thirds vote of the House. The act was approved March 26, 1897.

The plaintiff in error is a corporation, and was organized in December, 1897, after said act went into effect. In the fall of 1898 it commenced the manufacture of beet sugar, and on December 2 and on December 29 presented claims for bounty amounting to $28,451.07, which were duly paid by the state. Ten thousand dollars of said claim were paid out of the fund raised and appropriated for that purpose, and the remainder, $18,451.07, out of the general fund. So that all the bounty claimed to have been earned for the years 1897 and 1898 apparently was paid.

Note.—Inasmuch as the Supreme Court of the State of Michigan takes judicial cognizance of the Legislative Journal of the Legislature the same as it would of a state statute, we have assumed that this court will do the same. Otherwise this court would not have before it the same information that was before the state court. At all events, counsel for plaintiff in error agree that we may incorporate in our statement here the one made before the state court.

At the session of the legislature of 1899 several appropriation bills specifically providing for further appropriations for beet sugar bounty were introduced and considered, but were defeated.

One—House bill No. 933, file No. 231—was entitled, "A bill to make an appropriation for the payment of claims

arising under the provisions of Act No. 48 of the public acts of 1897, entitled, 'An act to provide for the encouragement of the manufacture of beet sugar, and to provide a compensation therefor, and to make an appropriation therefor', approved March 26, 1897."

This bill provided for a bounty of one cent per pound, and made a specific appropriation of $400,000 for the years 1899 and 1900 to pay such bounty. But the bill failed to become a law.

In a message to the legislature, the Governor called attention to an opinion of the Attorney General (dated June 2, 1900), that the proposed legislation, as well as that of 1897, upon the subject, was unconstitutional. An attempt was then made in another bill to fix a bounty of one-half per cent per pound, and to make a specific appropriation of $100,000 for the two years mentioned. This was House bill No. 277, and was a bill "to amend act No. 48 of the public acts of 1897." It failed to pass.

Other bills were introduced covering the same subject matter, but they failed to pass.

Thus it appears that the Legislature of 1899, whenever its attention was called to the subject by the title of any bill, refused to make any appropriation or to recognize any obligation to pay sugar bounties.

But it is claimed, and it is a fact, that the same Legislature did pass an act—No. 263—the title of which is as follows: "An act to provide a tax to meet the several appropriations for which a tax is not otherwise provided, for the general expenses of the State government; salary of the State officers; expenses of the State departments and expenses of the Legislature for the years eighteen hundred ninety-nine and nineteen hundred."

This act, it is claimed, provided for a tax to cover bounties to manufacture beet sugar, although there is nothing in the title nor in the body of the act nor in the legislative journals to show any such thing.

It is alleged in the petition, however, that a committee of the House of Representatives caused to be made a statement showing the different amounts necessary to be raised; and it is claimed that in this statement was an estimate for an excess of bounty over the tax previously raised, amounting to $42,714.06, and a further estimate of the amounts needed for the years 1899 and 1900, being $50,000 for 1899 and $150,000 for 1900. But it is not claimed that any such thing appears anywhere in the Legislative Journals or in the act itself. And in fact, there is no such record.

This portion of the petition was demurred to, as an attempt to vary the terms of the act, and also that the act does not amount to an appropriation for a beet sugar bounty.

It may be noted that the act of 1897 expressly limited the appropriation and the tax therefor to the years 1897 and 1898.

Under the dates of December 2 and 29, 1898, as we have already stated, the plaintiff in error presented its claim for bounty earned, amounting to $28,451.07, which presumably covered all such claims to the end of the year 1898. It appears, therefore, that the claims now presented by plaintiff in error are for bounties alleged to have been earned since the beginning of the year 1899, and for which no appropriation has been made nor taxes levied to pay such bounties, unless it can be said that act No. 263 of the acts of 1899 so provides.

The amount claimed is $24,262. The Auditor General refused to draw his warrant for the amount claimed, and assigned two reasons as ground for refusal:

First: The act of 1897 providing for a beet sugar bounty is in conflict with the constitution of the State.

Second: No appropriation to pay such bounty has been made; therefore there are no funds which can be lawfully used to pay it.

These were the questions presented to the State Supreme Court, and both were there decided adversely to the plaintiff in error. We think, therefore, that the case falls within that line of decisions of this court where it holds itself bound by the decision of the State court.

Proposition I.

The decision of the Supreme Court of the State of Michigan that the act of 1897 providing for a beet sugar bounty is in conflict with the Constitution of the State and its decision that the Legislature of 1899 made no appropriation to pay sugar bounties should control the case here.

It seems to us that very little need or can be said on this proposition. The doctrine of the Michigan Court as laid down in this case was promulgated more than thirty years ago, and has been consistently followed ever since.

People vs. Salem, 20 Mich., 452.
Bay City vs. State Treasurer, 23 Mich., 499.
Anderson vs. Hill, 54 Mich., 477.

Davis vs. Bd. of Supervisors, 64 Mich., 404.
Dodge vs. Van Buren Judge, 118 Mich., 189.
Atty. Gen. vs. Pingree, 120 Mich., 550.

So that the decision in the case at bar is no new departure. The Court has not allowed people to be misled on the subject.

When Act 48 of 1897 was enacted it was squarely in the face of the Constitution as it has been construed for nearly a third of a century. Does it fall short of absurdity to assert that such an enactment constitutes a contract?

If, under such circumstances as are here presented, the construction of a State Constiution by the State Court may be reviewed by this Court, what is there left of independent State judiciary?

With regard to the question of whether there was an appropriation to pay beet sugar bounties under Act 263 of 1899, we call attention to the constitutional provision bearing on the subject. Sec. 5, Art. XIV., is as follows:

> "No money shall be paid out of the treasury except in pursuance of appropriations made by law."

Our Court said (see p. 17, Record): "Here no specific appropriations made by the Act of 1899, *by which the sugar bounties could be paid, and the Legislature has not recognized the relator's claim.*"

Will this Court review this construction of the State statute; if so, what may it not review?

In the case of Elmwood vs. Marcy, 92 U. S., 289, at page 294, this Court said:

> "We have always followed the highest Court of the State in its construction of its own Constitution and laws. It is only when they have been construed differently at different times that, in cases like this, we have adopted as a rule of action, the first decision and rejected the last. This has been done on the ground that rights acquired on the strength of the former decisions ought not to be lost by a change of opinion in the Court. *But where the construction has been fixed by an unbroken series of decisions, the federal courts accept and apply it in cases before them.* If a different rule were observed it is not difficult to see that great mischief would ensue."

In the case of Burgess vs. Seligman, 107 U. S., 20, it was said:

> "Since the ordinary administration of justice is carried on by the State courts, it necessarily happens that by the course of their decisions certain rules are established which become rules of property and action in the States, and have the effect of law and which it would be wrong to disturb. This is especially true with regard to the law of real estate and the construction of State Constitutions and statutes. Such established rules are always regarded by the federal courts no less than by the State courts themselves as authoritative declarations of what the law is. But when the law has not been thus settled it is the right and duty of the federal courts to exercise their own judgment as they always do in reference to the doctrines of commercial law and general jurisprudence. So when contracts and transactions have been entered into and rights have accrued thereon under a particular state of the decisions, or where there has been no decision of the State tribuanls, the federal courts properly claim the right to adopt their own interpretation of the law applicable to the case, although a different interpretation may be adopted by the State court after such rights have accrued. But even in such cases, for the sake of harmony and to avoid confusion, the federal courts will lean towards an agreement of views if the question seems to them to be balanced with doubt."

We cite also:

Rowan et al. vs. Runnels, 5 Howard, 134, at p. 139.

Ohio Life Ins. Co. vs. Debolt, 16 Howard, 416, at p. 432.

National Bank vs. Ottawa, and Post vs. Supervisors et al., 105 U. S., 667.

South Ottawa vs. Noah C. Perkins, and Supervisors vs. Kendall, 94 U. S., 260.

East Oakland vs. Skinner, 94 U. S., 258.

Without referring to the many other cases decided by this Court we submit that the case at bar is clearly within the principles laid down in the cases from which we have quoted.

II.

The act of 1897 providing for a beet sugar bounty is in conflict with the Constitution of the State of Michigan.

It would seem to be as trite as the multiplication table that the very nature of taxation requires that it should be levied for a public purpose. This will, no doubt, be conceded.

It will also be conceded that the act providing for a sugar bounty means taxation.

So that the question to be solved is:

Can such taxation be deemed to be for a public purpose? We are well aware that the purpose of taxation is not limited to the absolute needs of an existing government. We are also aware that, generally speaking, it is for the Legislature to determine what are the public needs and what best subserves the prosperity and well-being of society.

It is doubtless with these general principles in mind that counsel say that "The State by the Legislature and Executive, has decided that its *public interest* demands that the manufacture of beet sugar from sugar beets grown in this State shall be encouraged, etc."

While it is no doubt true that the Legislature must first determine and pass upon such questions as these, it must be equally true that it cannot transform taxation for a private purpose into taxation for a public purpose by a mere declaration that it is for a public purpose. Where it is clear that the taxation is in fact for a private purpose, no amount of juggling with words can make it otherwise.

The argument that the incidental benefit to the public which is derived from the establishment of a new private industrial enterprise renders the latter a public matter for which taxes may be levied, is an old one and has often been made; and when made, almost uniformly rejected by the courts.

It was long ago held that a state legislature was not omnipotent, and that all the branches of our government, state and national, are limited by the nature and fundamental principles of republican government, as well as by constitutional limitations.

Calder vs. Bull, 3 Dall. (U. S.), 386.

The learned justice who rendered this opinion used this language:

> "The obligation of a law in governments established on express compact, and on republican principles must be determined by the nature of the power on which it is founded.
>
> "A few instances will suffice to explain what I mean. A law that punishes a citizen for an innocent action, or in other words, for an act which, when done, was in violation of no existing law; a law that destroys or impairs the lawful private contracts of citizens; a law that makes a man a judge in his own cause; *or a law that takes property from A and gives it to B.* It is against all reason and justice for a people to entrust a Legislature with such powers; and therefore it cannot be presumed that they have done it. The genius, the nature and the spirit of our state governments amount to a prohibition of such acts of legislation; and the general principles of law and reason frobid them."

There is much more equally emphatic language in the opinion, which can at all times be read with interest.

The question which is here under discussion arose in the case of—

> Loan Association vs. Topeka, 20 Wall. (U. S.), 655.

The legislature of Kansas authorized certain cities, of which the city of Topeka was one, to issue bonds for the purpose of building bridges, aiding railroads, water power or other works of internal improvement. Under this supposed authority the city of Topeka issued bonds to the amount of $100,000, to the King Wrought Iron Bridge Manufacturing and Iron Works Company, of Topeka, "to aid and encourage that company in establishing and operating bridge shops in said city of Topeka."

The broad question of legislative power was discussed and decided. It was held that a statute which authorizes a town to issue its bonds in aid of the manufacturing enterprise of individuals is void, because the taxes necessary to pay the bonds would, if collected, be a transfer of the property of individuals to aid in the projects and gain of others, and *not for a public use in the proper sense of that term.*

The language is so strong that we quote liberally:

"It must be conceded that there are rights in every free government which are beyond the control of the State. A government which recognized no such rights, which held the lives, the liberty and the property of its citizens subject at all times to the absolute disposition and unlimited control of even the most democratic depository of power, is, after all, but a despotism of the many—of the majority, if you choose to call it so; but it is nevertheless a despotism. * * * The theory of our governments, state and national, is opposed to the deposit of unlimited power anywhere. The executive, the legislative and the judicial branches of these governments are all of limited and defined powers. There are limitations on such power which grow out of the essential nature of all free governments. Implied reservations of individual rights, without which the social compact would not exist, and which are respected by all governments entitled to the name. * * * To lay with one hand the power of the government on the property of the citizen, and with the other to bestow it upon favored indivdiuals, is none the less a robbery because it is done under the forms of law and is called taxation; this is not legislation; it is a decree under legislative forms. Nor is it taxation. * * * We have established, we think, beyond cavil, that there can be no lawful tax which is not laid for a public purpose. It may not be easy to draw the line in all cases so as to decide what is a public purpose in this sense and what is not. * * * But in the case before us in which the towns are authorized to contribute *aid by way of taxation to any class of manufactures,* there is no difficulty in holding that this is not such a public purpose as we have been considering. If it be said that a benefit results to the local public of a town by establishing manufactures, the same may be said of any other business or pursuit which employs capital or labor. The merchant, the mechanic, the inn-keeper, the banker, the builder, the steamboat owner, are equally the promoters of the public good and equally deserving the aid of citizens by forced contributions. No line can be drawn in favor of the manufacturer which would

not open the coffers of the public treasury to the importunities of two-thirds of the business men of the city or town."

The strongest argument in favor of this kind of legislation which we remember to have seen is that of Mr. Benjamin R. Curtis, in a case where the facts certainly appealed to the court to relax the rule, if it could possibly be done with safety.

The great "Boston fire" had destroyed the business portion of the city of Boston, and the tax roll upon which the State collected taxes was lessened by millions of dollars. The incidental effects were well described by Mr. Curtis, whose language we quote further on.

The State Legislature undertok to authorize the city of Boston to issue bonds to the amount of $20,000,000, to raise money to loan the owners of land, the buildings upon which were destroyed by the fire; the object being to encourage the speedy rebuilding of the burned district. It need not be stated or argued that the incidental benefits of such rebuilding which would inure to the city of Boston and the State at large would have been very great.

Mr. Curtis presented the following:

"The main questions in this case are these: Can there be such a destruction of property by fire in the capital city of the State, the main seat and center of its wealth, industry, commerce and business, the prosperity and advance of which are so intimately connected with its own, that the one cannot be touched without seriously affecting the other, as to justify the State in lending money to those whose property has been destroyed, upon ample security, to enable them to restore the city to its former condition? Can there be so general a calamity and destruction by fire, in a city owning more than a third of the taxable property of the State, and paying more than a third of the taxes for public purposes, as would justify the State, upon prudential considerations, in lending a helping hand for the purpose of preserving her own resources and the mainsprings of her own prosperity? Can there be a destruction of property in such a city, by fire, so serious and calamitous as to interfere with the business of the people, the interests of labor, and the finances of the whole community, to such a degree as to justify the Legisla-

ture in bringing to the aid of the sufferers a loan from the state, to avert some, at least, of the great public loss and suffering that would be occasioned by such a calamity?

"The statement of these questions carries with it their answer. There might be so general a calamity, produced by the destruction of property by fire in Boston, as to require a loan of money by the State as a measure of self-preservation.

"The primary object of the statute is not to benefit and aid private persons. Its purpose and end are strictly of a public nature; to restore and increase its taxable property and resources of the State; to prevent and guard against the great evils and losses arising from so great and general a calamity in embarrassing business and industry, deranging finances, and seriously lessening the wealth and prosperity of a large and most important part of the whole people, and interfering with their comfort, happiness and progress."

The opinion of the Court is a very full and exhaustive one. We quote from it:

"The power to levy taxes is founded on the right, duty and responsibility to maintain and administer all the governmental functions of the State, and to provide for the public welfare. To justify any exercise of the power requires that the expenditure which it is intended to meet shall be for some public service, or some object which concerns the public welfare. The promotion of the interests of individuals, either in respect of property or business, although it may result incidentally in the advancement of the public welfare, is, in its essential character, a private and not a public object. However certain and great the resulting good to the general public, it does not, by reason of its comparative importance, cease to be incidental. The incidental advantage to the public, or to the State, which results from the promotion of private interests, and the prosperity of private enterprises or business, does not justify their aid by the use of public money raised by taxation, or for which taxation may be necessary. It is the essential character of the direct object of the expenditure which must determine its validity, as justifying a tax, and not the magnitude of the interests to be affected, nor the degree to

which the general advantage of the community, and thus the public welfare, may be ultimately benefited by their promotion.

"The principle of this distinction is fundamental. It underlies all government that is based upon reason rather than force."

Lowell vs. Boston, 111 Mass., 454, at pp. 460-1.

We cite the cases of

Central Branch U. P. R. R. vs. Smith, 23 Kan., 745;
The State vs. Osaukee Tp., 14 Kan., 418;

to show that the Legislature cannot make the purpose of taxation a public one by merely declaring it to be so, or by yoking a private to a public purpose.

In the case of

Curtis vs. Whipple, 24 Wis., 350,

it was held that a statute which authorized taxation in behalf of an educational institution was invalid, because the institution was a private enterprise, not under control of the public authorities.

The following language is found on pp. 354-5:

"Nor will the location of the institution at Jefferson and the incidental benefits which may thereby arise to the people of the town, sustain the tax. This is not the kind of a public benefit and interest which will authorize a resort to the power of taxation. Such benefits accrue to the people of all communities from the exercise in their midst of any useful trade or employment, and the argument, pursued to its logical result, would prove that compulsory payment or taxation might be made use of for the purpose of building up and sustaining every such trade or employment, though carried on by private persons for private ends, or the purposes of mere individual gain and emolument. That there exists in the State no power to tax for such purposes, is a proposition too plain to admit of controversy. Such a power would be obviously incompatible with the genius and institutions of a free people; and the practice of all liberal governments, as well as all judicial authority, is against it. If we

> turn to the cases where taxation has been sustained as in pursuance of the power, we shall find in every one of them that there was some direct advantage accruing to the public from the outlay either by its being the owner or part owner of the property or thing to be created or obtained with the money, or the party immediately interested in and benefited by the work to be performed, the same being matters of public concern; or because the proceeds of the tax were to be expended in defraying the legitimate expenses of government, and in promoting the peace, good order and welfare of society."

A case similar to the foregoing is

Jenkins vs. Anderson, 103 Mass., 94.

The following question was submitted to the Supreme Judicial Court of Maine:

> "Has the Legislature authority under the Constitution to pass laws enabling towns by gifts of money or loans of bonds, to assist individuals or corporations to establish or carry on manufacturing of various kinds, within or without the limits of said towns?"

The answer was in the negative.

Opinion of Judges, 58 Maine, 590.

We quote the following from the opinion in answer to some of the suggestions of counsel for plaintiff in error in this case:

> "The general benefit to the community resulting from every description of well-directed labor is of the same character whatever may be the branch of industry upon which it is expended. All useful laborers, no matter what the field of labor, serve the State by increasing the aggregate of its products—its wealth. There is nothing of a public nature any more entitling the manufacturer to public gifts than the sailor, the mechanic, the lumberman or the farmer. Our government is based upon the equality of rights. All honest employments are honorable. The State cannot rightfully discriminate among occupations, for a discrimination in favor of one branch of industry is a discrimination ad-

verse to all other branches. The State is equally to protect all, giving no undue advantages or special and exclusive preferences to any."

In the case of Allen vs. Jay, 60 Maine, 124, it seems to us that the Court pointed out one test by which a private can be distinguished from a public purpose. If the business for which the tax is to be levied is under private control and not subject to public control, it must be essentially a private business, and a tax in aid of that business would be for a private purpose.

The Legislature of Missouri provided for a bounty for planting, protecting and cultivating forest trees, to be paid by the county; the law was held to be unconstitutional.

Deal vs. Mississippi Co., 107 Mo., 464.

III.

No appropriation to pay bounties for 1899 and 1900 has been made; and there being no funds which can lawfully be used for such purpose, the writ must be denied.

Counsel for the plaintiff in error have evidently sought to avoid the effect of a determination that the act of 1897 is unconstitutional. In fact, it is said that "it is unnecessary to determine whether act No. 48 of the public acts of 1897 is valid, in order to entitle the relator to the mandamus prayed for."

The facts in the case defeat this position.

Act 48 of 1897 made no appropriation beyond the year 1898. So that when Jauary 1, 1899, arrived, there was no longer any authority to pay out moneys for sugar bounties earned thereafter, conceding the act to be constitutional.

Act 263 of 1899 provided for a tax for four things, viz.: For appropriations not otherwise provided for; salaries of State officers; expenses of the State departments, and the expenses of the Legislature, all for the years 1899 and 1900. There is no appropriation for beet sugar bounties for these two years, unless it be claimed that act 263 itself makes it. But act 263 clearly refers to appropriations made by some other act or acts. So that if act 263 covers any appropriations for beet sugar bounties, it must refer to act 48 of 1897, as there is no other recent legis-

lation on the subject; and that act, as we have shown, made no appropriation beyond the year 1898.

It may be claimed that section 8 of act 48, 1897, creates an obligation to pay a sugar bounty for seven years, and that this is equivalent to an unlimited appropriation for seven years. We can hardly believe that this will be seriously claimed. But if it is, it may be said, first, that this proposition depends upon the constitutionality of act 48; if that act was invalid, there was no appropriation even under the theory suggested. So that if the original act goes down, relators claim goes down with it.

Act 263, as shown by its title, was "An act to provide a tax to meet the several appropriations for which a tax is not otherwise provided, for the general expenses of the State government; salaries of the officers; expenses of the State departments and expenses of the Legislature for the years eighteen hundred and ninety-nine and nineteen hundred." The body of the act provides for the levy of a tax for a certain amount, "to meet the several appropriations made by law wherein no tax is otherwise provided." Nowhere in the act is there any reference to sugar bounties. Several times during the session the Legislature refused to make any specific appropriation for sugar bounties. If there is any presumption from the legislative record, it is that the Legislature did not intend to pay sugar bounties. It certainly fails to show an intention to recognize any equities or moral obligations resting upon the State.

The State Constitution, Sec. 20, Art. 4, proides:

> "No law shall embrace more than one object, which shall be expressed in its title."

Any member of the Legislature of 1899 having voted several times against a specific appropriation to pay sugar bounties and finding none in existing statutes, and knowing that the Constitution requires the purpose of every act to be expressed in its title, would never suspect that in voting to levy a tax "to meet the several appropriations for which a tax is not otherwise provided," he was voting to pay several hundred thousand dollars for sugar bounties.

The question of what constitutes an appropriation was fully and exhaustively discussed in

> Ristine, Auditor General, vs. State of Indiana, and State of Indiana vs. Ristine, Auditor General, 20 Ind., 328 and 345.

But as we have already pointed out, our own court has found that no appropriation for the purpose claimed was made.

Much effort has been made to bring this case within that of United States vs. Realty Co., 163 U. S., 427. In that case it was nowhere asserted that there was any legal claim under the original act of 1890 which could have been enforced. With regard to subsequent legislation, this court simply said:

> "There was enough in the case as presented to Congress upon which to base the assertion that there was a moral and honorable claim upon the public treasury which that body had the constitutional right to recognize and pay."

The Legislature of Michigan has not yet recognized nor attempted to recognize the claim of the plaintiff in error. This fact destroys any similarity between the cases and renders further discussion on this point unnecessary.

Considerable had been said about the moral obligation resting upon the State to pay sugar bounties said to have been earned by comlying with the provisions of act 48 of 1897.

We do not suppose that the act was passed without the knowledge of the agents of the plaintiff in error and it is among the possibilities that some of them were somewhat instrumental in procuring its passage. If they were they did not create any equities in favor of nor moral obligations running to themselves.

We are not inclined to believe that a moral obligation resting upon the State can grow out of an unconstitutional statute passed in the face of a long line of decisions holding such legislation to be invalid.

> "When a statute is adjudged to be unconstitutional it is as if it had never been. *Rights cannot be built up under it;* contracts which depend upon it for their consideration are void; it constitutes a protection to no one who has acted under it, and no one can be punished for having refused obedience to it before the decision was made."
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> Cooley, Const. Lim., 6 Ed., p. 222.

It is not believed there will be the slightest dispute over this rule laid down by the courts and asserted by the distinguished author just quoted. If it is as though Act 48 of 1897 had never been passed, then there could have been,

on the part of the State, no promise, no inducement. But this reasoning, it is said, is purely technical and does not reach the true merits of the case in hand. We think otherwise. The constitutional limitations on the Legislature were intended for the protection of the people. You may call the one hundred and thirty-two members of the Legislature agents of the people if you will, still they are agents with a written authority beyond which they cannot go and bind their principal either legally or morally. But they are not agents in the ordinary sense of the word. They are public officers, and together constitute a body whose powers, although exceedingly broad, are not without constitutional limit. The people have a right to presume that such limit will not be exceeded. So that when such a body, in defiance of the constitutional direction, seek to take money out of the pockets of one taxpayer and put it into that of another, we submit that the undertaking, in whatever form or shape it may take, does not create any moral or other obligation upon the people of the State.

Had the decisions of the State Court been the other way, and had the plaintiff in error made investments relying upon such decisions, it would have had both a moral and a legal claim which would and ought to be enforced, even if the State Court should see fit to change its views and refuse to enforce it. But no such case is before us. The plaintiff in error ought to have known, and presumptively did know, that if it made investments under Act 48 of 1897, it could never enforce any claim for bounty in the State Courts.

It might speculate, and very likely did speculate, on the probability of being able to collect the bounty without opposition. But such speculation could not give its claim any standing as a moral, and much less as a legal, obligation resting upon the State.

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